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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,956	12/20/2000	Hau Lee	DEM1P003	7270
36088	7590	02/25/2009	EXAMINER	
KANG LIM 3494 CAMINO TASSAJARA ROAD #436 DANVILLE, CA 94506			ROBINSON BOYCE, AKIBA K	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HAU LEE,
KRISHNA VENKATRAMAN, MICHAEL NEAL,
SUZANNE VALENTINE and PHIL DELURGIO

Application No. 09/741,956
Technology Center 3600

Mailed: February 25, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal.*
BENNETT, *Review Team Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 18, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed October 17, 2008 under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details.

Specifically, page 2 of the Final Rejection mailed December 28, 2007 includes a § 112 rejection of claim 1 which has not been addressed in the Examiner's Answer. Clarification regarding the status of the § 112 rejection of claim 1 is required.

INFORMATION DISCLOSURE STATEMENT

Appellants filed an Information Disclosure Statement (IDS) dated May 8, 2008. There is no indication on the record that the Examiner has considered the above IDS. MPEP § 609 requires the Examiner to consider

any IDS filed by Applicants if timely submitted. A written communication notifying Appellants of the Examiner's consideration of the above IDS is required. In addition, it is noted that while the U.S. Patent Documents were considered in the IDS dated March 9, 2001, it is not apparent whether the Other Document ("Report of Novelty Search") has been considered.

CONCLUSION

Accordingly, it is **ORDERED** that the application be returned to the Examiner:

- 1) to issue a PTOL-90 which clarifies the status of the § 112 rejection of claim 1;
- 2) to consider the IDS filed May 8, 2008;
- 3) to consider the "Other Document" appearing in the IDS filed March 9, 2001; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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